

March 16, 2015

Sonia R. Carvalho
City Attorney
Office of the City Attorney
20 Civic Center Plaza, M-29
P O Box 1988
Santa Ana, CA 92702

Re: Your Request for Advice
Our File No. A-15-037

Dear Ms. Carvalho:

This letter responds to your request for advice on behalf of Mayor Pro Tem Vince Sarmiento regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ We are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate.

Additionally, our advice applies only to the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code Section 1090.

QUESTION

Does Mayor Sarmiento have a conflict of interest that prohibits him from participating in a lawsuit that a citizens’ group filed against the City of Santa Ana?

CONCLUSION

No. Mayor Sarmiento does not have a “financial interest” in the governmental decisions.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are the city attorney for the City of Santa Ana and you write on behalf of Mayor Pro Tem Vince Sarmiento. The City is engaged in a lawsuit regarding land use entitlements, the California Environmental Quality Act, and the validity of the City's environmental impact report. The Lutheran High School of Orange County and Concordia University, wish to develop five acres as a subdivision for single-family homes. To accomplish this, they will need a zoning variance. Following three years of environmental review, the City granted the zoning variance and approved a subdivision map. A citizen's group filed a lawsuit against the city (naming the high school and the college as real parties in interest) challenging the City's decisions. The city council will be making many decisions related to the lawsuit.

Mayor Sarmiento's son attends the high school. The family pays the standard tuition rate with no discounts or other benefits.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.

(b) Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$460 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.(Section 87103.)

Mayor Sarmiento does not have an interest in the high school based solely on his son's attendance. Consequently, the Act does not prohibit him from participating in the decisions related to the lawsuit involving the school.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Assistant General Counsel

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl